IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

ST.Rev..No. 204 of 2004

(TA.227/2003 of SALES TAX APPELLATE .TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE)

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REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE:

M/S. KALLIYATH STEEL AGENCIES,
PANNIYANKARA,
KOZHIKODE.

BY ADV.SRI.MANOJ CHANDRAN
ADV. SRI.K.SRIKUMAR

RESPONDENT/ RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA.

BY SR.GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 11/10/2007, ALONG WITH STRV NO. 210 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev. Nos. 204 of 2004 & 210 of 2004

Dated this the 11th day of October, 2007.

O R D E R

H.L.Dattu, C.J.

The assessment year in question is 1989-90. The assessee is a dealer registered under the provisions of both Kerala General Sales Tax Act and Central Sales Tax Act. The petitioner is a dealer in iron and steel. The business premises of the assessee had been inspected by the Income Tax authorities in exercise of the powers under Section 132 of the Act, and after inspection had found that the petitioner had suppressed an income of Rs.33,75,734/-.

(2). The assessee had filed its annual return before the assessing authority for the assessment year 1989-90. The assessing authority has rejected the books of accounts maintained and also the returns filed by the dealer and thereafter has proceeded to pass best of judgment assessment by relying upon the report of the Income Tax authorities. While doing so, the assessing authority has made an addition of 10% of the total turnover declared by the dealer. That would amount to Rs.53,47,769/-. Aggrieved by the said addition made by the assessing authority, the assessee was before the first appellate authority. The appellate authority had modified the orders passed by the assessing authority. The assessee being aggrieved by the orders so passed by the first appellate authority had filed T.A.No.227 of 2003 before the

Tribunal. The State also being aggrieved by the orders passed by the first appellate authority had filed appeal before the Tribunal in T.A.No.463 of 2003.

(3). The Tribunal by its order dated 26th February, 2004 has rejected the assessee's appeal and has partly allowed the appeal filed by the State.

(4). The reasoning and conclusions reached by the Tribunal is as under:

> "We have further considered the objection of the State that the sustained addition is below the actual suppression detected and the estimation made by the assessing authority is reasonable and just. As we have already held that the suppressed turnover to be treated as taxable sale, the addition sustained by the Deputy Commissioner (Appeals) is inadequate and below the actual suppression detected. At the same time, the addition of Rs.52,73,771.11 sustained by the assessing authority is also found to be little bit on the higher side. The assessing authority has not pointed out any defects in the accounts other than the suppression detected during the search conducted by the Income tax authorities. It is also found that the Income tax authorities have considered the assessee's entire purchase and sales during the year while fixing the conceded income. Considering all aspects of the case, we find that it is only fair and reasonable to add an amount of Rs.33,75,734/- which being the actual suppression detected and 50% of the above towards probable omission and suppression. The assessing authority is directed to modify the appellant's assessment for the year 89-90 as ordered above."

(5). The assessee being aggrieved by the rejection of its appeal and allowing of the State's appeal has filed these tax revision cases before this Court under Section 41 of the Kerala General Sales Tax Act. The questions of law framed by the assessee for consideration and answer from this Court are

as under:

Questions of law in S.T.Rev.No.204 of 2004:

i). Is not the Tribunal in error in confirming the best judgment addition based on the findings of the Income Tax authorities alone without conducting an independent enquiry by the appropriate sales tax authorities especially when there are findings by the Income Tax Appellate Authorities that no verifications were done with the purchase to prove the sales actually made by the assessee?

ii). Whether the best judgment addition confirmed by the Appellate Tribunal is having any rational nexus to the materials on record?

Iii). Whether the materials on record warrants a best judgment addition to the conceded turnover especially when the Income Tax authorities have found that no verification were done with the purchase to prove sales actually made by the assessee?

iv). Is not the Tribunal in error in not correctly following the findings of the Income Tax Appellate Tribunal while confirming the best judgment addition to the conceded turnover?

The questions of law framed in S.T.Rev.No.210 of 2004 are as under:

i). Is not the Tribunal in error in confirming the best judgment addition based on the findings of the Income Tax authorities alone in the absence of an independent enquiry by the appropriate sales tax authorities?

ii). Is not the Tribunal in error in making an addition of 50% for probable omission and suppression when there is a specific finding that there are no defects in the accounts other than the suppression detected by the Income Tax authorities?

Iii). Whether the best judgment addition confirmed by the Appellate Tribunal is having any rational nexus to the materials on record?

iv). Whether the materials on record warrants a best judgment addition to the conceded turnover especially when the Income Tax authorities have considered the petitioner's entire purchase and sales during the year while fixing the conceded income?

vi). Is not the Tribunal in error in not correctly following the findings of the Income Tax Appellate Tribunal while confirming the best judgment addition to the conceded turnover?

(6). Sri.K.Manoj Chandran, learned counsel appearing for the petitioner contends that the Tribunal was not justified in passing the impugned order, having said that the only basis for the assessing authority for the assessment is the inspection report of the Intelligence Officer of the Income Tax Department. The learned counsel would submit, at the most the Tribunal could have added to the total turnover declared by the assessee to the turnover said to have been suppressed by the assessee by the Income Tax Department. Therefore, the learned counsel would submit that the Tribunal was not justified in adding 50% to the actual suppression detected by the Intelligence Wing of the Income Tax Department.

(7). Sri. Muhammad Rafiq, learned counsel for the Revenue sought to justify the impugned order passed by the Tribunal.

(8). There was a search in the business premises of the assessee by the Income Tax Department. After such search, the department had in the mahazar drawn had stated that the assessee had suppressed his turnover in a sum of Rs.33,75,734/-. The report of the Intelligence Wing of the

Income Tax Department was made available to the assessing authority at the time of completion of the assessment. There was no other material before the assessing authority for rejecting the books of accounts and the returns filed by the assessee. While completing the assessment in the petitioner's case, in the absence of any other material, the assessing authority could not have made further addition than what was detected by the Intelligence Wing of the Income Tax Department. That means to say, to the total turnover declared by the assessee an addition of a sum of Rs.33,75,734/- could have been added by the assessing authority. Instead of doing so, the assessing authority had made an addition of 10% of the total turnover declared by the assessee.

(9). The Tribunal while allowing the State's appeal has made an addition of 50% of the actual suppression detected by the Income Tax Department. In our opinion, this has no basis whatsoever. The Tribunal in its order admits that there was no other material except the inspection report received from the Income Tax Department. If that be so, there was no reason for the Tribunal to add 50% of the so-called suppression that was detected by the Intelligence Wing of the Income Tax Department. In view of the above, the direction issued by the Tribunal to make an addition over and above what was detected by the Income Tax Department cannot be sustained by us. Accordingly, we make the following order:

ORDER

i) The revision petitions are allowed in part.

ii). A direction is issued to the assessing authority to make an addition of a sum of Rs.33,75,734/- to the total turnover declared by the assessee and after such quantification of the liability, the assessing authority is directed to issue a revised demand notice to the petitioner.

(10). In view of the order passed in the revision petitions all pending interim applications are closed.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS/DK.